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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL RAY MULLINS,

Defendant and Appellant.

C089926

(Super. Ct. No. 18CR002464)

ORDER GRANTING  
CALENDAR PREFERENCE,  
EXPEDITING REVIEW,  
STRIKING ONE-YEAR  
PRIOR PRISON TERM  
ENHANCEMENT, AND  
IMMEDIATELY ISSUING  
REMITTITUR

Defendant Michael Ray Mullins pleaded no contest to unlawful possession of a weapon commonly known as a billy or blackjack. (Pen. Code, § 22210.)<sup>1</sup> Before he was sentenced for that offense, defendant committed and was sentenced for another offense in a different county, which included a one-year prior prison term enhancement pursuant to

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

section 667.5, subdivision (b). Ultimately, the trial court here imposed a single aggregate term of four years eight months, and imposed certain fines and fees, including a restitution fine of \$900. Defendant and the People have stipulated to a resolution of the appeal striking defendant's prior prison term enhancement, and waiving all other appellate claims, including a claim under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 that the trial court unlawfully imposed costs without first making a determination of defendant's ability to pay them.

We accept the parties' stipulation and affirm the judgment as modified. We grant defendant's motion for expedited resolution. The remittitur shall issue forthwith.

#### FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts of defendant's crime are irrelevant to the issues raised on appeal. Simply put, in March 2019, defendant pleaded no contest to possessing a weapon commonly known as a blackjack, in violation of section 22210. In exchange for the dismissal of other criminal charges and allegations,<sup>2</sup> defendant agreed to an upper term of three years.

Before sentence was imposed for the blackjack offense, defendant offended again in Shasta County. In April 2019, he was convicted of being a felon in possession of a firearm. (§ 29800, subd. (a).) A sentence for that offense was imposed in Shasta County that same month. In addition to the lower term of 16 months for the offense, the Shasta County Superior Court imposed a consecutive one-year enhancement pursuant to section 667.5, subdivision (b), for a total term of two years four months.

In June 2019, the Tehama County Superior Court pronounced a single aggregate term of four years eight months, consisting of a principal term of three years for the blackjack offense, a consecutive eight-month subordinate term for the Shasta County

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<sup>2</sup> Including special allegations, pursuant to section 667.5, that defendant suffered prior prison terms arising out of four separate Tehama County prosecutions: one for burglary (§ 459), and three for different drug crimes.

firearm offense, and a consecutive one-year term for the section 667.5 enhancement from the Shasta County sentence. (See generally *People v. Phoenix* (2014) 231 Cal.App.4th 1119, 1126 [first sentence was “replaced” when the court combined the first and second sentences from the two separate cases into one aggregate sentence].)

The trial court imposed a \$900 restitution fine pursuant to section 1202.4, a mandatory \$40 operations assessment (§ 1465.8) and a mandatory \$30 conviction assessment (Gov. Code, § 70373) as “set out in” a presentencing report created by the Tehama County Probation Department.

The trial court gave the parties an opportunity to “take issue with any part” of the sentence. Though defense counsel asked the court to reconsider one aspect of the sentence, she did not object to imposition of the costs. Defendant timely appealed.

While the appeal was pending, Senate Bill No. 136 (2019-2020 Reg. Sess.) became law and “eliminate[d] the section 667.5 one-year prior prison term enhancement for all prior convictions, except sexually violent offenses.” (*People v. Bermudez* (2020) 45 Cal.App.5th 358, 378; see stats. 2019, ch. 590, § 1.)

### DISCUSSION

We accept and agree with the parties’ stipulation that defendant’s one-year prior prison term enhancement should be stricken, because Senate Bill No. 136 is ameliorative and applies retroactively to his case, which is not yet final on appeal. (*People v. Bermudez, supra*, 45 Cal.App.5th at p. 378 [striking the one-year prior prison term after agreeing with the parties that “because defendant’s sentence is not yet final, and because his prior offense (possessing a prohibited weapon) was not a sexually violent offense, he is entitled to the ameliorative benefit” of Senate Bill No. 136].)

## DISPOSITION

The judgment is modified to strike the one-year prior prison term enhancement. The trial court is directed to prepare an amended abstract of judgment reflecting the judgment as modified and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, we affirm. The clerk of this court is directed to immediately issue the remittitur upon filing of the opinion. (See Cal. Rules of Court, rule 8.272(c)(1).)

BY THE COURT:

/s/  
BLEASE, Acting P. J.

/s/  
MURRAY, J.

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KRAUSE, J.